

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1766 of 1985

with

Civil Application No.119 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRA SAKERCHAND

Versus

MADHUKANTABEN G MODY

Appearance:

MR MB GANDHI for Petitioners

MR HB SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/04/2000

ORAL JUDGEMENT

#. The petitioners are the defendants against whom the
opponent-plaintiff had filed HRP Suit No.2844 of 1975 in
the Court of Small Causes at Ahmedabad. It is the case
of the plaintiff in the said suit that he is the owner of
a property situated in Pada Pole, Kalupur Ward No.1 in

the City of Ahmedabad being MC No.1797/3. That defendant no.1 is the tenant of the suit premises at a monthly rent of Rs. 30/-. The defendant no.1 fell in arrears of rent since 1.11.1973. Defendant no.1 neglected to pay the rent though demanded. It is also the case of the plaintiff that the defendant no.1 has illegally sub let the suit premises to the defendant no.2. It is also the case of the plaintiff that the defendant no.1 has not used the suit property for a period of 6 months immediately preceding the suit and that he has also permanent alternative accommodation in the city of Ahmedabad. On all the aforesaid grounds the suit for possession was filed by the plaintiff against the defendants. Before filing the suit, the plaintiff had also given notice to the defendants but the defendants did not give any reply.

#. The defendants appeared in the suit by filing written statement at exh.12. According to them the plaintiff had waived the earlier suit notice dated 9.1.1974. They denied that they were in arrears of rent. The dispute of standard rent was also taken in the written statement. It was contended that the predecessor in title of the plaintiff had authorised the defendant no.1 to sub let. It is also the case of the defendants that the defendant no.2 was sub tenant prior to 1959 and therefore, he is a protected sub tenant. On the aforesaid grounds the suit was resisted by the defendants.

#. The Trial Court framed various issues at exh.33. Regarding non payment of rent, the Trial Court came to the conclusion that the defendant no.1 was not negligent in payment of rent. Standard rent was fixed at Rs. 30/- p.m.

#. The Trial Court however, found that the defendant no.2 cannot be said to be the lawful sub-tenant and that the defendants have failed to prove that the predecessor in title of the plaintiff had permitted defendant no.1 to sub let the premises. Ultimately on the ground of subletting the decree for possession was passed by the Trial Court.

#. The defendants carried the matter further in appeal by filing Civil Appeal No. 146 of 1980 before the Appellate Bench of the Court of Small Causes, Ahmedabad. The Appellate Bench confirmed the finding of subletting and dismissed the said appeal. The cross objections of the plaintiff were also dismissed.

#. The defendants therefore, have filed this Revision

Application under section 29(2) of the Bombay Rent Act challenging the decree for possession passed by the Trial Court and which was confirmed by the Appellate Bench.

#. At the time of hearing Mr. M.B.Gandhi learned advocate for the defendants argued that the defendant no.2 was the protected sub-tenant as he was in possession before 21.5.1959. It was also submitted by him that in any case the predecessor in title of the plaintiff had also allowed the defendant no.1 to sub let or transfer the premises and therefore, it cannot be said that the defendant no.1 illegally assigned his tenancy rights in the suit property to the defendant no.2. Mr. H.B.Shah for the respondent has argued that on appropriation of evidence both the courts below have come to the correct conclusion that there is subletting by the defendant no.1 to defendant no.2 and that the defendant no.1 has failed to show that he was entitled to sublet the premises or that the defendant no.2 was protected sub tenant having in possession prior to 21.2.1959.

#.. I have heard the learned advocate for both the sides. I have also perused the judgments of the courts below and evidence on record. So far as the non payment of the rent is concerned both the courts have found that the defendant no.1 was ready and willing to pay the rent and the only point which is canvassed is the point of subletting. The question which is required to be considered therefore, is whether the defendant no.1 can sub let the suit premises to the defendant no.2 or not. The Appellate Bench has considered the question of subletting in para 17 of its judgment. The original owner of the suit premises was one Hiralal Pandya. He inducted the defendant no.1 as a tenant in the year 1955. Said Hiralal Pandya died on 14.1.1956 and after his death his widow Hiraben and son Ajitkumar succeeded as landlords and they sold the suit property by sale deed exh.35 on 26.6.1967. On that very date notice of attornment was sent by the plaintiff at exh.36 to the defendant no.1. In the said notice it is mentioned that the defendant no.1 is the tenant of the suit premises. In reply to that notice the defendant no.1 did not point out anything about defendant no.2. It was therefore, found that the conduct of defendant no.2 was not at all natural. The Appellate Bench has also given cogent reasons as to why the say of the defendant no.1 is not believable. It was also found that it is not possible to believe the presence of defendant no.2 in the suit premises prior to 21.5.1959. The Appellate Bench has also considered the evidence of the plaintiff at exh.34 and the evidence of Hiraben widow of previous landlord at

exh.78. It has been found that she has denied passing of any rent note to the defendant no.1 while he was inducted as a tenant in the year 1955. She had also denied the story of permission given to the defendant no.1 to sublet the premises. Considering the totality of the evidence on record therefore, it was found that the defendant no.1 was not given any permission to sublet nor can it be said that defendant no.2 was in possession of the suit premises prior to 21.5.1959. It was found that the defendant's witness Ajitkumar exh.90 has not only not supported the defendants' case but he has shattered to pieces the strategy evolved by the defendants and made it quite transparent. The evidence of two witnesses has also been discussed by the Appellate Bench in para 25 of its judgment and the Appellate Bench has found that the Trial Court was right in passing the decree under section 13(1)(e) of the Bombay Rent Act. Accordingly the Appellate Bench dismissed the appeal of the present petitioners.

#. Both the courts below have accordingly come to the conclusion that the defendant no.1 has sublet the suit premises illegally and without consent of the landlord and that the defendant no.2 cannot be said to be the protected sub-tenant. Aforesaid finding is based on appreciation of evidence and it cannot be said that said appreciation of evidence is illegal. This Court while exercising the revisional jurisdiction cannot reappraise the evidence as if it is entertaining an appeal. In that view of the matter, no case is made out for interference against the order of the Appellate Court in this Revision Application. I do not find any error of law in the order of the Appellate Court or that of the Trial Court. In that view of the matter there is no substance in this Application and therefore, the same is required to be dismissed and accordingly dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

#. At this stage Mr. Gandhi asks for sometime to vacate the suit premises. Mr. HB Shah for the respondents has no objection. In the facts and circumstances I direct that the decree for possession may not be executed till 30.9.2000 on condition that the petitioners shall file a usual undertaking before this court within 4 weeks from today. In the said undertaking the petitioners shall mention that they are in exclusive possession of the suit premises and that he will not transfer or alienate the suit property to anyone and without obstructing in any manner he will hand over the vacant and peaceful possession to the respondent on or before 30.9.2000. The

petitioners shall continue to pay the mesne profit regularly during the aforesaid period. If the petitioners fail to file the undertaking within 4 weeks from today or if the petitioners commit any breach of the said undertaking it will be open for the landlord to execute the decree for possession forthwith.

CA No.119 of 1986

##. The petitioners had also submitted the above said CA for producing some additional evidence. However, no additional evidence can be taken in a revision application. Moreover, in view of the disposal of the main CRA this CA is required to be dismissed. Accordingly this CA is dismissed. Notice discharged. No order as to costs.

(P.B.Majmudar.J)

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